

Alleghany county, was recorded on the 27th of May, 1845. It also appears, that the mortgage of the personal estate of Schley was not recorded, but was renewed from time to time, at periods generally within, but occasionally after an interval of more than twenty days, from the 22d of March, 1845, to the 4th of June, 1846, which last mortgage executed on that day was recorded on the 18th of the same month and year.

The state of the account and the amount of the liabilities of the defendant Griffith, for the defendant Schley appears to have fluctuated from the origin of this transaction, in March, 1845, to the 4th of September of the same year, but no new responsibility seems to have been incurred after this latter period, and in the last mortgage of the 4th of June, 1846, all of the notes indorsed by Griffith, at different times up to, and inclusive of, those indorsed on the 4th of September, 1845, are recited and secured to be paid.

The plaintiff in his bill alleges, that it was a part of the original agreement of these parties, mortgagor and mortgagee, that the instruments in question should not be put upon record, but that they should be kept secret, and yet that the mortgagor should retain possession of the property, to the end that he might be believed to be the owner thereof, to the great prejudice of the said *cestui que trusts*.

The answer of the defendant, Griffith, upon this point, denies that the deeds were withheld from the record, in consequence of any agreement between Schley and himself, or for the purpose of keeping the existence of them secret, or that he, the defendant, knew or suspected, that Schley had any reason for desiring that they should not be recorded, other than the natural desire of avoiding the mortification of discovering one's temporary embarrassments to the society in which he daily moved, and he averred, that his confidence in the integrity and professional attainments of said Schley, assured him, that there could be no circumstance connected with his pecuniary condition, to make it improper in Schley to make, or that respondent to grant his request in this respect.

The answer then speaks of the execution of the new mort-